

Sandia National Laboratories  
**Funds-In Agreement**

1. SPONSOR NAME		2. FUNDS-IN AGREEMENT NO.	
		4. PROJECT TITLE/DESCRIPTION	
3. ESTIMATED PERFORMANCE PERIOD      (IN MONTHS)			
5. FINANCIAL  a. Estimated Cost Sandia Cost                                 \$  DOE Depreciation & Added Factor                 \$  Total Cost to Sponsor                                 \$ b. Incremental funding approved:   Yes   No c. Amount advanced this action                                 \$  <b><i>SEE ATTACHED INVOICE FOR ADVANCE PAYMENT INSTRUCTIONS</i></b>		6. SANDIA NATIONAL LABORATORIES  a. TECHNICAL REPRESENTATIVE:  Sandia National Laboratories P. O. Box 5800 Albuquerque, NM 87185- TELEPHONE NO.: (505)  b. ADMINISTRATIVE REPRESENTATIVE: Mary Monson Sandia National Laboratories P. O. Box 5800 Albuquerque, NM 87185-1380 TELEPHONE NO.: (505) 843-4183	
7. AGREEMENT TERMS AND CONDITIONS This agreement consists of this form with Terms and Conditions plus the following: a. Appendix A - Statement of Work                                 c. Appendix C - Patents Clause      Form III <input type="checkbox"/> Form IV b. Appendix B - Technical Data Clause    Form I <input type="checkbox"/> Form II                                 d. Other (identify)			
8. SPONSOR ACCEPTANCE		9. SANDIA NATIONAL LABORATORIES ACCEPTANCE	
Name: Title: Address:   Telephone No.:		Name: Warren D. Siemens Title: Director Address: Sandia National Laboratories P. O. Box 5800 Albuquerque, NM 87185-1380  Telephone No.(505) 843-4200	
Signature:	Date	Signature	Date

## TERMS AND CONDITIONS

**1. PERFORMANCE BY DEPARTMENT OF ENERGY (DOE) CONTRACTOR.** It is understood by the parties that the Contractor, Sandia Corporation (Sandia), which operates and manages Sandia National Laboratories, is obligated to comply with the terms and conditions of its contract with the DOE when performing services for the Sponsor under this Agreement.

**2. TERM.** The term of this Agreement shall commence upon Sandia's receipt of the advance funding required in Paragraph 4. below and shall continue for the estimated performance period stated in block 3 above. Performance of work under this Agreement may be terminated by either party upon 30 days written notice to the other party, without liability except as provided hereinafter, upon giving written notice to the other party. Sandia shall terminate this Agreement only when Sandia determines that such termination is in the best interest of the Government; provided, that Sandia shall have the right to withdraw its acceptance of this agreement if the Sponsor shall have failed to advance the funds required by Paragraph 4. below within 90 days of Sandia's execution of this Agreement. In the event of termination, the Sponsor shall be responsible for DOE's and Sandia's costs incurred, but in no event shall the Sponsor's cost responsibility exceed the total cost to the Sponsor as described in Paragraph 3. below.

**3. COSTING POLICY.** Sandia's costs shall be determined in accordance with DOE's policy for costing work it performs for others. The total cost to the Sponsor for Sandia's performance of work under this Agreement shall not, without the Sponsor's prior consent, exceed the estimated cost set forth in block 5 above; provided however, Sandia shall have no obligation to continue or complete performance of the work if the actual cost of such performance will exceed said estimated cost; and provided further, that said estimated cost shall not operate as a cost limitation on the obligations and liabilities assumed by the Sponsor under other provisions of this Agreement. Sandia will provide notice as soon as reasonably practicable if the actual cost to complete performance will exceed the estimated cost so as to allow the Sponsor to elect to provide additional funding without an interruption in the performance of work.

(continued)

**4. FUNDING AND PAYMENT.** The Sponsor shall provide sufficient funds in advance of work to be performed by Sandia under this agreement, in accordance with instructions provided with an invoice from Sandia. Sandia shall have no obligation to perform in the absence of adequate advance funds. Sandia will submit an invoice to the Sponsor for advance funding in the amount of the estimated cost of the work unless incremental funding is permitted. If the estimated period of performance exceeds 120 days and the estimated cost exceeds \$25,000, the Sponsor may, with Sandia's approval, advance funds incrementally. In such a case, Sandia will initially invoice the Sponsor for the first 120 days of work and thereafter invoice the Sponsor monthly so as to maintain a 90-day period that is funded in advance. Payment shall be made directly to Sandia, and the Sponsor shall identify the Funds-In Agreement No. on the check. Upon termination or completion, any excess funds shall be refunded to the Sponsor.

**5. PROPERTY.** Unless the parties hereto otherwise agree, all equipment and test apparatus procured with funds provided by the Sponsor shall be disposed of as directed by the Sponsor.

**6. DISCLAIMER. NEITHER THE GOVERNMENT, DOE, THE CONTRACTOR, NOR PERSONS ACTING ON THEIR BEHALF, MAKES ANY EXPRESS OR IMPLIED WARRANTY WITH REGARD TO THE WORK TO BE PERFORMED HEREIN, OR THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF SUCH WORK, INTELLECTUAL PROPERTY, OR ANY RESULTING PRODUCT.**

**7. PUBLICATION MATTERS.** No publicity releases (including news releases and advertising) relating to this Agreement and the work hereunder shall be issued by either party without prior coordination with the other party. Any technical paper, article, publication or announcement of advances generated in connection with work done under this Agreement, during the period of performance of the Agreement or in the future, shall give credit to the Sponsor as a sponsor of the work and shall contain the Sandia standard publication disclaimer statement (copy furnished upon request).

**8. INDEMNITY.** The Sponsor hereby agrees to hold harmless and indemnify Sandia and the United States Government, their officers, agents and employees for any and all damages, whatsoever, including but not limited to, personal injury and property damage sustained as a result of, or arising out of performance of the work under this Agreement.

**9. NON-INTERFERENCE.** Notwithstanding any other provision contained herein, the use of a DOE facility and/or Sandia personnel in support of this Agreement can only be authorized on a noninterference basis, i.e., the work performed under this Agreement shall not interfere with work related to the prime mission of the facility. Although Sandia's commitment to this effort is equal to its commitment to DOE mission programs, DOE programs may, for reasons related to national security or exigency, preempt efforts in support of this Agreement. Accordingly, neither the Government, DOE, Sandia, nor persons acting on their behalf will be responsible, irrespective of causes, for failure to perform services or furnish information or data hereunder at any particular time or in any specific manner.

**10. PATENTS AND COPYRIGHT INDEMNITY - LIMITED.** The Sponsor shall indemnify the Government and Sandia and their officers, agents, and employees against liability, including costs, for infringement of any United States patent or copyright arising out of any acts required or directed by the Sponsor to be performed under the agreement to the extent such acts are not normally performed at the facility. Further, the foregoing indemnity shall not apply unless the Sponsor shall have been informed in a reasonable time by the Sandia or Government of the suit or action alleging such infringement, and such indemnity shall not apply to a claimed infringement which is settled without the consent of the Sponsor unless required by a court of competent jurisdiction.

**11. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT.** The Sponsor shall report to the Government, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this agreement of which the Sponsor has knowledge. In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this agreement or out of the use of any supplies furnished or work or services performed hereunder, the Sponsor shall furnish to the Government when requested by the Government, all evidence and information in possession of the Sponsor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Sponsor has agreed to indemnify the Government.

**12. PATENTS AND TECHNICAL DATA.** Terms and conditions regarding patents and technical data rights are set forth in Appendix B and Appendix C, attached hereto and hereby incorporated herein. Reference therein to "Facility Operator" means Sandia which manages and operates the Government-owned, contractor-operated facility where the work under this Agreement is to be performed.

**13. EXPORT CONTROL.** Each party is responsible for its own compliance with laws and regulations governing export controls.

**14. ENTIRE AGREEMENT.** It is expressly understood and agreed that this agreement with its appendices contains the entire agreement between the Parties with respect to the work to be performed under this agreement.

## **APPENDIX B**

### **TECHNICAL DATA CLAUSE (FORM I) DATA RIGHTS**

The Sponsor and the Government shall have the right to use, disclose and duplicate for any purpose whatsoever, and have others do so, all technical data first produced or used in the performance of work under this Agreement. (Technical data is defined as set forth in 48 CFR 27.401.)

Any Sponsor furnished, properly marked, proprietary data necessary or pertaining to work under this agreement will not be disclosed outside the Government or Facility Operator, and will be returned to the Sponsor by or before termination of this agreement.

## APPENDIX C

### PATENTS CLAUSE (FORM III) INVENTION RIGHTS

#### A. Definitions.

1. **"Sponsor"** means the person or entity with which this Agreement is made.
2. **"Invention"** means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
3. **"Sponsor Invention"** means any invention, to the extent the Sponsor is performing any work under this Agreement, of the Sponsor, conceived or first actually reduced to practice in the course of or under this Agreement.
4. **"Facility Operator"** means the Operating Contractor which manages and operates the Government-owned, contractor-operator facility where the work under this Agreement is to be performed.
5. **"Patent Counsel"** means the DOE Counsel for intellectual property assisting the DOE Contracting activity.

**B. Facility Operator Inventions.** The Government shall have rights in any Invention conceived or first actually reduced to practice in the performance of work under this Agreement by employees of Facility Operator in accordance with the provisions of Department of Energy's (DOE) operating contract with Facility Operator subject to Sponsor obtaining, upon notice to the DOE Patent Counsel, a nonexclusive, nontransferable, irrevocable, paid-up license to practice said Invention throughout the world.

**C. Sponsor's Election to Retain Rights.** Subject to the provisions of paragraph D.2. of this clause with respect to any Sponsor Invention reported and elected in accordance with paragraph E. of this clause, the Sponsor may elect to obtain the entire right, title, and interest in any patent application filed in any country on a Sponsor Invention and in any resulting patent secured by the Sponsor. Where appropriate, the filing of patent applications by the Sponsor is subject to DOE security regulations and requirements.

#### D. Rights of Government.

1. **Assignment to the Government.** The Sponsor agrees to assign to the government, upon request, the entire right, title, and interest in any country to each Sponsor Invention to which the Sponsor has acquired title where the Sponsor:
  - a. Does not elect pursuant to this clause to retain such rights; or
  - b. Fails to have a patent application filed in that country on the Sponsor Invention or decides not to continue prosecution or not to pay any maintenance fees covering the Invention; or
  - c. At any time, the Sponsor no longer desires to retain title.

#### 2. Terms and Conditions of Waived Rights.

- a. To preserve the Government's residual rights to Sponsor Invention, the Sponsor shall take all actions in reporting, electing, filing on, prosecuting, and maintaining Invention rights promptly, but in any event, in sufficient time to satisfy domestic and foreign statutory and regulatory time requirements, or, if the Sponsor decides not to take appropriate steps to protect the Invention rights, it shall notify DOE in sufficient time to permit the Government to file, prosecute and maintain patent applications and any resulting patents prior to the end of such domestic or foreign statutory or regulatory time requirements.
- b. The Sponsor shall convey or assure the conveyance of any executed instruments necessary to vest in the Government the rights set forth in this clause.
- c. The Sponsor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Sponsor Invention throughout the world.
- d. The Sponsor shall provide the Government a copy of any application filed on a Sponsor Invention promptly after such application is filed, including its serial number and filing date.
- e. The Sponsor agrees to submit on request periodic reports no more frequently than annually on the utilization of a Sponsor Invention or on efforts at obtaining such utilization that are being made by the Sponsor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Sponsor, and such other data and information as DOE may reasonably specify. The Sponsor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph D.4. of this article. to the extent data or information supplied under this paragraph is considered by the Sponsor, its licensee or assignee to be privileged and confidential and is so marked, DOE agrees that, to the extent permitted by 35 U. S. C. 202(c)(5), it will not disclose such information to persons outside the Government.

f. The Sponsor agrees to refund any amounts received as royalty charges on any Sponsor Invention in procurements for or on behalf of the Government and to provide for that refund in any instrument transferring rights to any party in the Invention.

**3. Preference for United States Industry.** Notwithstanding any other provision of this clause, the Sponsor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Sponsor Invention in the United States unless such person agrees that any products embodying the Sponsor Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Sponsor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

**4. March-in-rights.** The Sponsor agrees that with respect to any Sponsor Invention in which it has acquired title, DOE has the right to require the Sponsor, an assignee, or exclusive licensee of a Sponsor Invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Sponsor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

- a. Such action is necessary because the Sponsor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Sponsor Invention in such field of use;
- b. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Sponsor, assignee, or their licensees;
- c. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Sponsor, assignee, or licensees; or
- d. Such action is necessary because the agreement required by paragraph 3. of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any Sponsor Invention in the United States is a breach of such agreement.

**E. Invention Identification, Disclosures, and Reports.**

1. The Sponsor shall furnish the Patent Counsel a written report containing full and complete technical information concerning each Sponsor Invention within six months after conception or first actual reduction to practice, whichever occurs first, in the course of or under this Agreement, but in any event prior to any on sale, public use, or public disclosure of such Invention known to the Sponsor. The report shall identify the Agreement and inventor(s) and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey a clear understanding to the extent known at the time of the disclosure of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the Invention. The report should also include any election of patent rights under this clause. When an Invention is reported under this paragraph E., it shall be presumed to have been made in the manner specified in Section (a.)(1.) and (2.) of 42 U.S.C. 5908.
2. The Facility Operator's contract with DOE requires that Inventions of the Facility Operator will be reported to DOE. In addition, DOE shall direct that Facility Operator's disclose to the Sponsor any such Inventions promptly upon conception or first actual reduction to practice, and the Sponsor shall notify DOE promptly thereafter of its desire to perfect its nonexclusive license set out in paragraph B. of this clause.

**F. Limitation of Rights.** Nothing contained in this patent rights clause shall be deemed to give the Government any rights with respect to any Invention other than an Invention conceived or actually reduced to practice under this Agreement except as set forth in the Facilities License of paragraph G.

**G. Facilities License.** In addition to the rights of the parties with respect to Inventions or discoveries conceived or first actually reduced to practice in the course of or under this Agreement, the Sponsor agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Sponsor, which at any time through completion of this Agreement are owned or controlled by the Sponsor and are incorporated in the facility as a result of this Agreement to such an extent that the facility is not restored to the condition existing prior to the Agreement (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.